

SIEMENS

PATENT
Attorney Docket No. 2002P03505WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor:	Thuy-Phong Le et al.)	Group Art Unit:	2446
)		
Serial No.:	10/533,083)	Examiner:	Nilanont, Y.
)		
Filed:	04/28/2005)	Confirmation No.:	2307
Title:	METHOD AND APPARATUS FOR INTERCHANGING DATA USING A TUNNEL CONNECTION			

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APPELLANTS' AMENDED APPEAL BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed in this application on 8 April 2009, and the Notification of Non-Compliant Appeal Brief mailed on 25 August 2009. In that Notification it was stated that according to MPEP Section 1205.02 [R-3] (vi) arguments concerning the merits of the ground of rejection presented for review cannot be including the heading "Grounds of Rejections to be Reviewed on Appeal" of the Appeal Brief. This Brief corrects that error. Specifically, the last paragraph of Section 6 was moved to the arguments section of the appeal brief. This brief supersedes the brief filed on 05 June 2009.

(Please proceed to the following page.)

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims canceled: 1 - 7.

Claims withdrawn but not canceled: None.

Claims pending: 8 - 23.

Claims allowed: none.

Claims rejected: 8 - 23.

The claims on appeal are 8 - 23. A copy of the claims on appeal is attached hereto in the Claims Appendix. Appellants respectfully appeal the final rejection of claims 8 - 23.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

In response to the Final Office Action mailed 8 January 2009, on 5 March 2009 Appellants filed a response after final rejection under Rule 116 without any proposed amendment to the claims. Consequently there are no proposed amendments which have not been entered. In an effort to reduce the number of issues on appeal, that Response did identify errors in the art rejections. The Advisory Action mailed 24 March acknowledges some of Appellants'

arguments but does not acknowledge that there is merit in those arguments. Nor does the Advisory Action provide any further support for the rejections. Consequently, this Appeal Brief is now submitted.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

5A. CONCISE EXPLANATION OF SUBJECT MATTER DEFINED IN INDEPENDENT CLAIMS 48 AND 61.

With reference by page and line number to the detailed description, the following summary describes one or more exemplary embodiments disclosed in the Specification and which are covered by specific claims, but it is to be understood that the claims are not so limited in scope.

5A(i). Summary of Subject Matter Defined In Independent Claim 8

Referring to Figures 1- 4, **Independent claim 8** is directed to a method for interchanging data (*see page 5, lines 24 – 31*) between an external device (*e.g., the ISP shown in all of the figures*) and applications installed on a plurality of network elements (*e.g., see the PC shown in all of the Figures*) of a packet-switching network (*the exemplary network includes at least the illustrated PC, MODEM and Router ROU shown in all figures*) using a tunnel connection (*such as indicated by the broken dashed line extending between the MODEM and either the interface IP-Addr.C or the PPTP entity shown in Figures 3 and 4*). *See page 3, lines 23-26; and page 12, lines 7 – 17.* Each network element (*e.g., the PC*) is connected to a network node device (*e.g., the Router ROU generally and, more specifically, either the interface IP-Addr.C or the PPTP entity*). The network node device is involved in the tunnel connection. *See page 15, lines 6 – 12.*

According to claim 8, the method includes assigning to the network node device (*e.g., the Router ROU*) a globally unique address (*page 5, lines 11 – 15*) so that the network node device (*e.g., the Router ROU*) forms a network-end terminal point of the tunnel connection when a plurality of network elements jointly use the tunnel connection. *See page 4, lines 34 – 36 and page 5, lines 4 – 15*);

and also in accord with claim 8, the method includes assigning to a network element a globally unique address (*see page 5, lines 24 – 31; see, also, page 4, lines 28 – 33.*) so that the

network element forms a network-end terminal point of the tunnel connection (i) when the network element (e.g., the PC) requires a global address for executing an application and (ii) when the tunnel connection is exclusively used by the network element. See page 13, lines 12 – 34. All data are routed through the network node device (page 15, lines 26 – 30), and the network node device is a terminal point or a data-routing entity of the tunnel connection. See page 15, lines 12 – 19; and page 5, line 24 – page 6, line 4.

5A(ii). Summary of Subject Matter Defined In Independent Claim 23

Also, in accord with Figures 2-4, **independent claim 23** is directed to a network node device involved in interchanging data (see page 5, lines 24 – 31) using at least one tunnel connection (such as indicated by the broken dashed line extending between the MODEM and either the interface IP-Addr.C or the PPTP entity shown in Figures 3 and 4; see page 3, lines 23-26; and page 12, lines 7 – 17;) between an external device (e.g., the ISP shown in all of the figures) and applications installed on a plurality of network elements (e.g., *see the PC shown in all of the Figures*) of a packet-switching network (*the exemplary network includes at least the illustrated PC, MODEM and Router ROU shown in all figures*), wherein each network element (e.g., the PC) is connected to a network node device (e.g., *the Router ROU generally and, more specifically, either the interface IP-Addr.C or the PPTP entity*),

wherein a network-end terminal point of the tunnel connection has a uniquely allocated global address (e.g., see *(page 5, lines 11 – 15)* wherein the network node device (e.g., *the Router ROU*) forms the network-end terminal point of the tunnel connection if a plurality of network elements jointly use the tunnel connection (see *page 4, lines 34 – 36 and page 5, lines 4 – 15*);

and wherein, if a network element requires a global address (see *again page 5, lines 11 – 15*) for executing an application, the network element forms the network-end terminal point of the tunnel connection (e.g., *the PC*) when the tunnel connection is exclusively used by the network element (*page 13, lines 12 – 34*) and all data are routed through the network node device (*page 15, lines 26 – 30*). See, also, *page 15, lines 12 – 19; and page 5, line 24 – page 6, line 4.*

6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR 41.37(c)(1)(vi)

1. Whether claims 8, 10-11, 13, 15 and 20 – 23 are unpatentable under 35 U.S.C. Section 103 over Chiles (U.S. 2001/0034759) in view of SGI (Techpubs Library “TRIX Admin: Networking and Mail”).

2. Whether claims 9, 12, 14 and 16 – 19 are unpatentable under 35 U.S.C. Section 103 over Chiles in view of SGI, further in view of Microsoft TechNet (“Microsoft Privacy Protected Network Access: Virtual Private Networking and Intranet Security”).

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

7A. APPELLANTS TRAVERSE ALL REJECTIONS BASED IN WHOLE OR PART ON THE COMBINATION OF CHILES IN VIEW OF SGI.

Appellants submit that the art rejections are each a failed effort to re-create the claimed subject matter because all of the rejections fail to identify every term in the independent claims 8 and 23 and the dependent claims; and because, even if it were possible to simply reassemble the prior art, there is no motivation in the cited art for the combinations recited in the claims.

Patentability of Each Claim is to be Separately Considered

Appellant urges that, to the extent that the claims are separately argued, patentability of each claim should be separately considered. General argument, based on deficiencies in the rejection of independent claims 8 and 23, demonstrates patentability of all dependent claims. However, none of the rejected claims stand or fall together because each dependent claim further defines a unique combination that patentably distinguishes over the art of record. For this reason, the Board is requested to consider all argument presented with regard to specific dependent claims presented under subheadings identifying each claim by number.

General Basis To Overturn All Rejections Under Section 103

In order to sustain the rejection of independent claims 8 and 23 under Section 103, it is necessary to clearly identify a particular part of the reference to be relied upon to show each feature of the claimed subject matter. MPEP §2143 provides that, to establish a prima facie case of obviousness, three criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one skilled in the art, to modify the reference or to **combine** teachings of references. Second, there must be a reasonable expectation of success. Third, the prior art must teach or suggest **all** of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art and not in the applicant's disclosure.

It is fundamental that all of the claimed features be found in the prior art combination in order to make a rejection. Yet this appeal is made because the prior art combination fails to provide all that is claimed. The rejections provide unsupportable statements that the claimed combination would result from combining the disclosures of Chiles and the "legacy system" of SGI as though the only missing element is a motivation to combine the references (which the rejection argues is met simply because "legacy systems" are still in use. they are to the contrary, As further explained, more is required to sustain the rejection of claims 8 and 23. The argument is analogous to one of drawing lines to connect dots when the only guide to connect the dots between Chiles and SGI is Appellants' disclosure. But instead of so acknowledging this deficit, the rejection essentially argues that the motivation to connect the dots according to claims 8 and 23 is inherently present because Legacy Systems still exist. First, as noted in the following argument, the SGI reference lacks sufficient disclosure to meet the terms of the claims. Second, even if the SGI reference did contain the requisite disclosure, the rejection assumes that some unsubstantiated motivation has existed in the prior art to reconstruct the references as though it would be proper to take Official Notice thereof, i.e., that, persons of ordinary skill would possess such a motivation to address Legacy systems in accord with the claimed combinations. .

If this were so, then, assuming that whenever any new combination of existing elements has merit, that same merit would be treated by a patent examiner (and arguably by ordinary persons of skill in the prior art), as though it were also a motivation existing in the prior art - to

make the new combination of existing elements; and, therefore, no combination would be allowable subject matter under Section 103. In essence, the rejection of claims 8 and 23 assumes no limit as to what is obvious so long as the elements can be found among multiple references.

That is, as long as it is possible to reconstruct a combination from prior art references, whether piecemeal or not, it can always be argued that a motivation to combine the references exists - simply by arguing (without express support) that (i) one skilled in the prior art would recognize the benefit of doing so, and (ii) based on this benefit the motivation for the combination therefore **must** exist in the prior art.

In essence, the issue before the Board is whether it is legitimate to recognize the benefits of the invention as disclosed by the Appellants and to use those benefits as a motivation to combine the references, when the prior art does not disclose any evidence that one skilled in the art would recognize the same benefits or otherwise be motivated to combine the references. The following points of argument are exemplary.

7B. REJECTION OF INDEPENDENT CLAIM 8 UNDER SECTION 103 BASED ON CHILES IN VIEW OF SGI IS IN ERROR.

Claim 8 requires, among other features, the combination of

element a:

assigning to the network node device a globally unique address so that the network node device forms a network-end terminal point of the tunnel connection when a plurality of network elements jointly use the tunnel connection;

and

element b:

assigning to a network element a globally unique address so that the network element forms a network-end terminal point of the tunnel connection when the network element requires a global address for executing an application, and when the tunnel connection is exclusively used by the network element

Any art rejection, whether raised under Section 102 or under Section 103, must identify all of the claimed features. The following discussion illustrates how the final rejection fails to do so. A valid rejection of independent claim 8 must provide support for the claimed feature of element b, above, requiring a

“tunnel connection ... exclusively used by the network element ...”

It is not seen how the SGI reference can be relied upon for this feature in order to reject the claims. Specifically, Figure 3.2 and related text in the SGI reference lack disclosure of an exclusive arrangement. Yet, at page 11 of the Final Office Action the rejection concludes that the SGI reference can disclose such, merely because the reference provides for tunnels between work stations in different networks. Claim 8 requires more and the combination of Chiles in view of SGI does not provide any basis to conclude that the arrangement shown in Figure 3.2 of SGI is a tunnel connection exclusively used by only one network element in one of the networks NET a and NET C. By all appearances, Figure 3.2 is a simplified illustration that does not even show the **use** of a router as “the network node device ... involved in the tunnel connection” as required by claim 8. That is, the Examiner cannot have it both ways. The figure cannot be used for what it does not show while ignoring what becomes inconsistent with the claim because the router is not shown to be part of the tunnel. Element b of Claim 8 requires both of the following: (i) that the network node device is involved **in** the tunnel connection; and (2) that the connection is exclusively used by the network element.

By ignoring roles of Router 1 and Router 2, while arguing that an exclusive tunnel connection exists between hosts on NET A and NET B, the rejection cannot also argue that these same routers perform no other transmission while a tunnel exists between the two hosts on different networks. The rejection relies upon a conceptual sketch (perhaps a virtual arrangement) to argue that a tunnel exists all the way from one Host to another Host (which is not what is claimed) while the SGI reference does not provide any disclosure to suggest being configured to only support a “tunnel connection ... **exclusively** used by the network element [i.e., a Host]” - to the exclusion of use of tunnel connections by other Hosts on the same network. Further, based on the Examiner’s use of the SGI reference, (i.e., ignoring the routers) it cannot be concluded that one of the routers shown in the figure would satisfy the claim requirement that “the network

node device is a terminal point or a data-routing entity of the tunnel connection.” In fact, because the rejection, at page 11, argues that the tunnel stops at the network node device, the rejection apparently reads the claimed “network node device” on something other than a router in Figure 3.2 of the SGI paper. That is, the tunnel connection as drawn in that figure does not stop at or include a router. In conclusion, it must be recognized that Figure 3.2 of the SGI reference is a simplified illustration which has been used inconsistently in order to make the rejection.

It is noted that the Chiles reference is relied upon to show element a of claim 8 and the SGI reference is relied upon to show element b of claim 8. However, there is not even a basis to conclude that the cited disclosure of the SGI paper differs from the element a:

“assigning to the network node device a globally unique address so that the network node device forms a network-end terminal point of the tunnel connection when a plurality of network elements jointly use the tunnel connection ...”

That is, it appears that the disclosure in the SGI paper is so thin that one cannot determine whether it should be read on element a or on element b. In either case, there is insufficient disclosure to satisfy either element a or element b and it is urged that the rejection was contrived to simply fill in dots and connect dots to “find” element b because the Chiles reference was used to “find” element a.

Furthermore, the text related to the cited figure of the SGI reference concerns multi-casts (see page 11) and would not be expected to define a tunnel in a way that precludes a plurality of network elements from jointly using the same tunnel connection during a multi-cast transmission. This, use of the SGI reference is inconsistent with the purposes set forth in the reference. If this not were true, it would imply that multi-casting could not include two devices on the same network! Nor could multi-casting be performed with a NAT (Network Address Translation) method, i.e., then applicants’ claimed invention would be required for all multi-casts. Also, citation of various host workstations in figure 3.2 of the SGI reference does not mean that the illustrated LANs each have only one work station. Rather, these are simplified illustrations.

The rejection of claim 8 also raises other points of argument without providing requisite support. At page 11 of the office action it is argued that it would be obvious for Legacy network systems (prior art) to use the combination of element a and element b, as though the rejection

might be made under Section 102. Yet there is no prior art of record to support the Examiner's position that a Legacy System should require this in order to operate. In fact, the SGI reference does not appear consistent with the Examiner's discussion of a Legacy system. As already noted, it appears that the SGI reference comes closer to satisfying element a than element b of claim 8.

If the intent is to rely on Legacy network systems to show that prior systems provide motivation to combine element a and element b, then the combination used to reject the claims must include references disclosing both element a and element b and the Legacy system and establishing the motivation to provide the claimed features. The rejection only speculates that a motivation exists to use Legacy systems which might otherwise have compatibility issues. This is not the same as a motivation to combine the prior art in order to meet the terms of claim 8.

Instead of establishing that a motivation exists which results in the combination of claim 8, as best understood, the rejection surmises that (contrary to the above argument) each of the references (Chiles or SGI) provides one of the above elements a or b and, absent any teaching or motivation (other than what Appellants have disclosed) it is not only permissible to substitute one for the other, but it is also permissible to combine the two elements when no prior art provides any suggestion for doing so. It is only the Appellants who teach the benefit of requiring both element a and element b in the alternative and there is no basis to suggest that one skilled in the art would form the claimed combination by reading the Chiles and SGI references.

7C. REJECTION OF THE INDEPENDENT CLAIM 23 UNDER SECTION 103 BASED ON CHILES IN VIEW OF SGI IS IN ERROR.

Claim 23 requires, among other features, the combination of

element c:

the network node device forms the network-end terminal point of the tunnel connection if a plurality of network elements jointly use the tunnel connection,

and

element d:

if a network element requires a global address for executing an application, the network element forms the network-end terminal point of the tunnel connection when the tunnel connection is exclusively used by the network element

Any art rejection, whether raised under Section 102 or under Section 103, must identify all of the claimed features. The following discussion illustrates how the final rejection fails to do so. A valid rejection of independent claim 8 must provide support for the claimed feature of element b, above, requiring a

“tunnel connection ... exclusively used by the network element ...”

For the same reasons presented above for claim 8, it is not seen how the SGI reference can be relied upon for this feature in order to reject claim 23. Specifically, Figure 3.2 and related text in the SGI reference lack disclosure of an exclusive arrangement. Yet, at page 11 of the Final Office Action the rejection concludes that the SGI reference can disclose such, merely because the reference provides for tunnels between work stations in different networks. Claim 23 requires more and the combination of Chiles in view of SGI does not provide any basis to conclude that the arrangement shown in Figure 3.2 of SGI is a tunnel connection exclusively used by only one network element in one of the networks NET a and NET C. By all appearances, Figure 3.2 is a simplified illustration that does not even show per claim 23 that

“each network element is connected to a network node device”

i.e., a Router of Figure 3.2.

That is, the Examiner cannot have it both ways. The figure cannot be used for what it does not show while ignoring what becomes inconsistent with the claim because the router is not shown to be part of the tunnel. Element d of Claim 23 requires both of the following:

- (i) that each network element is connected to a network node device; and
- (2) that the tunnel connection is exclusively used by the network element.

By ignoring roles of Router 1 and Router 2, while arguing that an exclusive tunnel connection exists between hosts on NET A and NET B, the rejection cannot also argue that these same routers perform no other transmission while a tunnel exists between the two hosts on different networks. The rejection relies upon a conceptual sketch (perhaps a virtual arrangement) to argue that a tunnel exists all the way from one Host to another Host (which is not what is claimed) while the SGI reference does not provide any disclosure to suggest being configured to only support a “tunnel connection ... **exclusively** used by the network element [i.e., a Host]” - to the exclusion of use of tunnel connections by other Hosts on the same network. Further, based on the Examiner’s use of the SGI reference, (i.e., ignoring the routers) it cannot be concluded that one of the routers shown in the figure would satisfy the claim requirement that “the network node device is a terminal point or a data-routing entity of the tunnel connection.” In fact, because the rejection, at page 11, argues that the tunnel stops at the network node device, the rejection apparently reads the claimed “network node device” on something other than a router in Figure 3.2 of the SGI paper. That is, the tunnel connection as drawn in that figure does not stop at or include a router. In conclusion, it must be recognized that Figure 3.2 of the SGI reference is a simplified illustration which has been used inconsistently in order to make the rejection.

It is noted that the Chiles reference is relied upon to show element c of claim 23 and the SGI reference is relied upon to show element d of claim 23. However, there is not even a basis to conclude that the cited disclosure of the SGI paper differs from the element c. See above.

That is, it appears that the disclosure in the SGI paper is so thin that one cannot determine whether it should be read **on element c or on element d**. In either case, there is insufficient disclosure to satisfy either element c or element d and it is urged that the rejection was contrived to simply fill in dots and connect dots to “find” element d because the Chiles reference was used to “find” element c.

Furthermore, the text related to the cited figure of the SGI reference concerns multi-casts (see page 11) and would not be expected to define a tunnel in a way that precludes a plurality of network elements from jointly using the same tunnel connection during a multi-cast transmission. This, use of the SGI reference is inconsistent with the purposes set forth in the reference. If this not were true, it would imply that multi-casting could not include two devices on the same network! Nor could multi-casting be performed with a NAT (Network Address Translation) method, i.e., then applicants’ claimed invention would be required for all multi-

casts. Also, citation of various host workstations in figure 3.2 of the SGI reference does not mean that the illustrated LANs each have only one work station. Rather, these are simplified illustrations.

The rejection of claim 23 also raises other points of argument without providing requisite support. At page 11 of the office action it is argued that it would be obvious for Legacy network systems (prior art) to use the combination of element c and element d, as though the rejection might be made under Section 102. Yet there is no prior art of record to support the Examiner's position that a Legacy System should require this in order to operate. In fact, the SGI reference does not appear consistent with the Examiner's discussion of a Legacy system. As already noted, it appears that the SGI reference comes closer to satisfying element c than element d of claim 23.

If the intent is to rely on Legacy network systems to show that prior systems provide motivation to combine element c and element d, then the combination used to reject the claims must include references clearly disclosing both element c and element d **and** the Legacy system **and** establishing the motivation to provide the claimed features. The rejection only speculates that a motivation exists to use Legacy systems which might otherwise have compatibility issues. This is not the same as a motivation to combine the prior art in order to meet the terms of claim 23.

Instead of establishing that a motivation exists which results in the combination of claim 23, as best understood, the rejection surmises that (contrary to the above argument) each of the references (Chiles or SGI) provides one of the above elements c or d and, absent any teaching or motivation (other than what Appellants have disclosed) it is not only permissible to substitute one for the other, but it is also permissible to combine the two when no prior art provides any suggestion for doing so. It is only the Appellants who teach the benefit of requiring both element c and element d **in the alternative** and there is no basis to suggest that one skilled in the art would form the claimed combination by reading the Chiles and SGI references.

Even if the above deficiencies did not exist, the invention still cannot be reduced to a piecemeal finding of individual elements known in the prior art. It is only the Appellants who teach the claimed combination.

7D. THE REJECTIONS UNDER SECTION 103 OF EACH CLAIM WHICH DEPENDS FROM CLAIM 8 ARE ALSO IN ERROR.

7D(i) CLAIM 13 IS ALLOWABLE UNDER SECTION 103.

In the method of claim 13, the network elements have associated local addresses which are unique only in the packet-switching network. The rejection relies upon Chiles for disclosing network elements with local addresses, but the claim requires more, i.e., claim 8 also recites “assigning to a network element a globally unique address.”

7D(ii) CLAIM 14 IS ALLOWABLE UNDER SECTION 103.

In the method of claim 14, the network elements have associated local addresses which are unique only in the packet-switching network. The rejection relies upon Chiles for disclosing network elements with local addresses, but the claim requires more, i.e., claim 8 also recites, “assigning to a network element a globally unique address.”

7D(iii) CLAIM 15 IS ALLOWABLE UNDER SECTION 103.

In the method of claim 15, the network elements have associated local addresses which are unique only in the packet-switching network. The rejection relies upon Chiles for disclosing network elements with local addresses, but the claim requires more, i.e., claim 8 also recites “assigning to a network element a globally unique address.”

7D(iv) CLAIM 20 IS ALLOWABLE UNDER SECTION 103.

In the method of claim 20 the network node device is alternately a terminal point or a data-routing entity of the tunnel connection. The rejection relies upon both Chiles and the SGI

reference without citation, arguing that the combination of references results in this alternate arrangement. It is not apparent how such a conclusion can be found to be inherent when the SGI reference, at best, is relied upon for only a conceptual illustration of a tunnel and the Examiner's reading of the claim on the SGI reference apparently does not read the network node device on a Router.

7D(v) CLAIM 21 IS ALLOWABLE UNDER SECTION 103.

In the method of claim 21 the network node device is simultaneously a terminal point and a data-routing entity of the tunnel connection. The rejection again relies upon both Chiles and the SGI reference without citation, arguing that the combination of references results in this alternate arrangement. It is not apparent how such a conclusion can be found to be inherent when the SGI reference, at best, is relied upon for only a conceptual illustration of a tunnel and the Examiner's reading of the claim on the SGI reference apparently does not read the network node device on a Router.

7E. CONCLUSIONS

An important issue before the Board is whether it is legitimate to recognize the benefits of the invention as disclosed by the Appellants and to use those benefits as a motivation to combine the references, when the prior art does not disclose any evidence that one skilled in the art would recognize the same benefits or otherwise be motivated to combine the references.

Argument has also been presented to demonstrate that the rejections under Section 103 are deficient for failure to find all of the claimed features in the references. The Examiner has argued rejections when claimed features are absent from the references and not suggested by the prior art. The Examiner has also argued obviousness when the references are clearly a result of searching for pieces of claimed subject matter without regard to finding a true motivation in the prior art to make the combination.

All of the rejections should be withdrawn and the claims should be allowed.

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8. APPENDICES

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: Sept. 23, 2009

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9. APPENDIX OF CLAIMS ON APPEAL

8. A method for interchanging data between an external device and applications installed on a plurality of network elements of a packet-switching network using a tunnel connection, wherein each network element is connected to a network node device, and wherein the network node device is involved in the tunnel connection, the method comprising:

 assigning to the network node device a globally unique address so that the network node device forms a network-end terminal point of the tunnel connection when a plurality of network elements jointly use the tunnel connection; and

 assigning to a network element a globally unique address so that the network element forms a network-end terminal point of the tunnel connection when the network element requires a global address for executing an application, and when the tunnel connection is exclusively used by the network element, wherein

 all data are routed through the network node device, and wherein

 the network node device is a terminal point or a data-routing entity of the tunnel connection.

9. The method as claimed in claim 8, wherein the tunnel connection is a connection which operates on the basis of the PPTP tunneling protocol and which transmits the data in a tunneled connection.

10. The method as claimed in claim 8, wherein the network elements are computers and the external device is an Internet service provider connected by a DSL modem.

11. The method as claimed in claim 10, wherein the computers are Personal Computers.

12. The method as claimed in claim 9, wherein the network elements are computers and the external device is an Internet service provider connected by a DSL modem.

13. The method as claimed in claim 8, wherein the network elements have associated local addresses which are unique only in the packet-switching network.

14. The method as claimed in claim 9, wherein the network elements have associated local addresses which are unique only in the packet-switching network.
15. The method as claimed in claim 10, wherein the network elements have associated local addresses which are unique only in the packet-switching network.
16. The method as claimed in claim 8, wherein the network node device is a router which has an entity for setting up and operating a PPTP tunnel connection.
17. The method as claimed in claim 9, wherein the network node device is a router which has an entity for setting up and operating a PPTP tunnel connection.
18. The method as claimed in claim 10, wherein the network node device is a router which has an entity for setting up and operating a PPTP tunnel connection.
19. The method as claimed in claim 13, wherein the network node device is a router which has an entity for setting up and operating a PPTP tunnel connection.
20. The method as claimed in claim 8, wherein the network node device is alternately a terminal point or a data-routing entity of the tunnel connection.
21. The method as claimed in claim 8, wherein the network node device is simultaneously a terminal point and a data-routing entity of the tunnel connection.
22. The method as claimed in claim 8, wherein the network node device is a terminal point or a data-routing entity of a plurality of tunnel connections.

23. A network node device involved in interchanging data using at least one tunnel connection between an external device and applications installed on a plurality of network elements of a packet-switching network, wherein

each network element is connected to a network node device, wherein

a network-end terminal point of the tunnel connection has a uniquely allocated global address, wherein

the network node device forms the network-end terminal point of the tunnel connection if a plurality of network elements jointly use the tunnel connection, wherein,

if a network element requires a global address for executing an application, the network element forms the network-end terminal point of the tunnel connection when the tunnel connection is exclusively used by the network element, and all data are routed through the network node device.

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10. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

None

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Atty. Doc. No. 2002P03505WOUS

11. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None